

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

CERTIFIED SECURITIES, INC., an Oregon
Corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

JUL 2 - 1945

PAUL P. O'BRIEN,
CLERK

No. 11012

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

CERTIFIED SECURITIES, INC., an Oregon
Corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer of Certified Securities, Inc., to the Com- plaint	49
Answer of Defendant Polk County to Petition for Condemnation	11 16
Answer of Oregon Mutual Life Insurance Com- pany to the Petition	17
Exhibit B—Assignment of Mortgage	32
Appeal:	
Certificate of Clerk to Transcript of Rec- ord on	65
Designation of Contents of Record on.....	63
Notice of	60
Statement of Points on, Appellant's (CCA)	67
Statement of Points on, Appellant's (DC)	61
Certificate of Clerk to Transcript of Record on Appeal	65
Declaration of Taking	8
Schedule A—Land Description and Tract Map	11
Designation of Contents of Record on Appeal	63

In the District Court of the United States
for the District of Oregon

Civil No. 1789

UNITED STATES OF AMERICA,
Petitioner,
v.

CERTIFIED SECURITIES, INC., an Oregon
corporation; ERNEST SCHULD; OREGON
MUTUAL LIFE INSURANCE COMPANY,
an Oregon corporation; POLK COUNTY, a
municipal corporation and political subdivision
of the State of Oregon,

Defendants.

PETITION FOR CONDEMNATION

Leave of Court having been obtained, your petitioner United States of America, through its attorneys, files this petition for condemnation and respectfully represents to this Honorable Court as follows:

I.

That the defendant Polk County is a municipal corporation and political subdivision of the State of Oregon and is by law vested with the power to sue and be sued in its own name;

II.

That this proceeding is instituted pursuant to and under authority of the following Acts of Congress:

The Act of August 1, 1888 (25 Stat. 357, 40 U. S. C. Sec. 257);

The Act of February 26, 1931 (46 Stat. 1421, 40 U. S. C. Sec. 258a) and Acts supplementary thereto and amendatory thereof;

The Act of August 18, 1890 (26 Stat. 316) as amended by the Acts of July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518, 50 U. S. C. Sec. 171), and March 27, 1942 (Public Law 507—77th Congress);

The Act of April 28, 1942 (Public Law 528—77th Congress);

III.

That pursuant to and under authority of the Acts of Congress above cited and referred to, the Secretary of War of the United States of America (1) has selected the hereinafter described lands for acquisition by the United States of America for use in connection with the expansion of Camp Adair, Oregon, and for such other uses as may be authorized by Congress or by Executive Order; (2) has U. S. v. Certified Securities, Inc., et al., Petition for Condemnation—1. [1*] determined and is of the opinion that it is necessary and advantageous to the interest of the United States to acquire by condemnation under judicial process the estate or interest hereinafter set forth in and to the lands so selected and hereinafter described for the public use and purpose of adequately providing for the expansion of a military training camp and for re-

*Page numbering appearing at foot of page of original certified Transcript of Record.

lated military purposes, and that said lands are required for immediate use; and (3) has made application to the Attorney General of the United States to cause this proceeding to be commenced, in pursuance of which application the Attorney General has authorized and directed this proceeding to be instituted;

IV.

That the estate taken by the petitioner in this proceeding is the full fee simple title in and to the hereinafter described lands, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines;

V.

That the lands condemned by and through this proceeding are located in Polk County, Oregon, within this judicial district, and are more particularly described as follows:

Tract No. A-240: Beginning at the Southeast corner of the Julia Ann Jones Donation Land Claim No. 52; running thence West 79.66 chains; thence South 36.75 chains; thence East 95.46 chains; thence North $22^{\circ} 57'$ West 39.93 chains to the place of beginning, containing 320 acres of land; more or less, all in Polk County, Oregon, said land above described being the North one-half of the Donation Land Claim of Jonathan Liggett and wife, and more particularly described as Claims No. 39 and No. 53, Notification No. 2697, Township 9 South, Ranges 5 and 6 West of the Willamette Meridian in Polk County, Oregon, and that a plan showing

the above-described lands is marked Schedule "B" attached to the declaration of taking on file herein;

VI.

That the public use for which the hereinabove described lands are taken is adequately to provide for the expansion of a military training camp, and for related military purposes;

VII.

That funds for the acquisition of the hereinabove described lands have been appropriated by the aforesaid Act of Congress approved April 28, 1942 (Public U. S. v. Certified Securities, Inc., et al.,—Petition for Condemnation—2. [2] Law 528—77th Congress), and that the Secretary of War of the United States has declared that he is of the opinion that the ultimate award for said lands will probably be within any limits prescribed by law as the price to be paid therefor;

VIII.

That the petitioner has caused diligent search to be made among the public records of the State of Oregon and of Polk County, wherein the above-described lands are located, to determine the names of the owners and the names of every other person interested in the lands taken herein or any part thereof, and that all of said persons insofar as can be ascertained from the public records have been made parties to this proceeding;

IX.

That the petitioner has done and performed every act and thing required by law to be done by said petitioner as a condition precedent to the bringing and maintaining of this action;

X.

That this proceeding was originally a part of the cause entitled United States v. N. Albert Nelson, et al., Civil No. 1304, wherein on the 18th day of August, 1942, this Court entered an order granting possession to the United States of America as of said date of the lands hereinabove described, along with other lands included in said proceeding; that simultaneously with the filing of this petition on this, the 4th day of February, 1943, there is also filed a declaration of taking in which the Secretary of War of the United States has estimated that the sum of \$15,009.00 is just compensation for the taking of the interest hereinabove set forth in and to the hereinabove described lands and that this amount, to-wit: \$15,009.00 is deposited into the Registry of this Court under the provisions of the Declaration of Taking Act approved February 26, 1931 (46 Stat. 1421; 40 U. S. C. 258a).

Wherefore, your petitioner prays:

(a) That this Court make an order reciting the filing of the declaration of taking and petition herein and the depositing into the Registry of this Court of the estimated just compensation for the taking herein of the above U. S. v. Certified Securities, Inc., et al.,—Petition for Condemnation—3. [3]

described lands and the effect thereof as to the vesting of title in the United States of America to said lands, subject to the limitations and exceptions hereinabove set forth, and granting immediate possession of said lands under said declaration of taking to the petitioner United States of America; and

(b) That this Honorable Court take jurisdiction of this cause and make and have entered herein all such orders, judgments and decrees as may be necessary to determine the ownership of the above-described lands, and to fix the value of the same and the amount of compensation to be paid by petitioner to whoever may be adjudged to be the owner or owners of the above-described lands, and to make and have entered all such further orders, judgments and decrees as may be necessary to vest the title to the estate or interest hereinabove set out in and to the lands hereinabove described in the United States of America and to make just distribution of the estimated and final award among those entitled thereto as expeditiously as possible.

BERNARD H. RAMSEY,

Special Assistant to the Attorney General;

JOHN E. WALKER,

WILLIAM L. DICKSON,

STANLEY R. DARLING,

JAMES LEAVY,

BERT C. BOYLAN,

HARRY D. BOIVIN,

Special Attorneys, Department of Justice,

/s/ JOHN E. WALKER

State of Oregon,
County of Multnomah.

I, John E. Walker, being first duly sworn, depose and say: That I am a duly appointed, qualified and acting Special Attorney of the Department of Justice; that I am possessed of information from which I have prepared the foregoing petition for condemnation; that the allegations therein contained are true as I verily believe.

/s/ JOHN E. WALKER

Subscribed and sworn to before me this 4th day of February, 1943.

[Seal] /s/ BERT C. BOYLAN
Notary Public for Oregon.

My commission expires: 5/6/45.

[Endorsed]: Filed Feb. 4, 1943. [4]

[Title of District Court and Cause.]

No. 33

DECLARATION OF TAKING

To the Honorable, the United States District Court:

I, Henry L. Stimson, Secretary of War of the United States, do hereby declare that:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. sec. 258a), and acts supplementary

thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518; 50 U.S.C. sec. 171), and March 27, 1942 (Public Law 507—77th Congress), which Acts authorize the acquisition of land for military or other war purposes, and the Act of Congress approved April 28, 1942 (Public Law 528—77th Congress, which Act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The expansion of a military training Camp, and for related military purposes. The said lands have been selected by me for acquisition by the United States for use in connection with the expansion of Camp Adair, Oregon, and for such other uses as may be authorized by Congress or by Executive Order, and are required for immediate use. [5]

2. A general description of the lands being taken is set forth in Schedule "A" attached hereto and made a part hereof and is a description of part of the same lands described in the petition in the case United States, petitioner, vs. N. Albert Nelson, et al., and 25,500 acres of land, more or less, in Polk County, Oregon, Civil No. 1304, in the District Court of the United States for the District of Oregon from which case the lands described in this Declaration of Taking will have been severed prior to the filing hereof.

T 9 S T 9 S
R 6 W R 5 W
S.12 S 7

TRACT NAME (WITHOUT GRID)

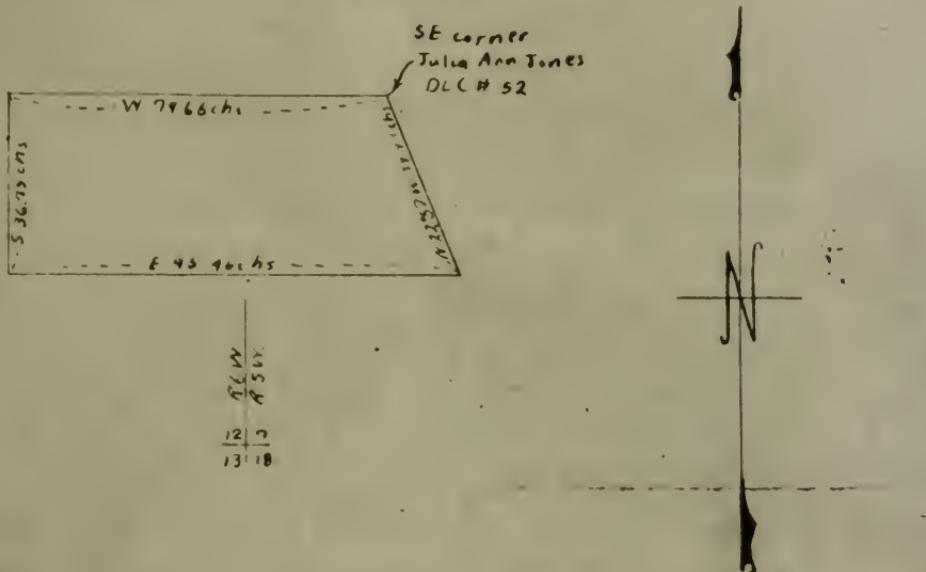
Project symbol o. P-7132 Tract No. A-240

Name of owner Certified Surveyor, Inc.

Field work by _____ Date _____

Description of tract _____

1" = 2000'
(SCALE: 4 inches equals 1 mile).



CLASSES OF LAND

Crop land _____ ()

Pasture land _____ ()

Forest land _____ ()

* _____ ()
(The grades of each class of land must be shown on the map proper.)

Name of any other class of land involved.

I certify that this is an accurate map of tract A-240, based on Deed Description, which shows this tract to contain 319.81 acres.

Joel E. Burnell
(Name)

Deputy Surveyor
(Title)

9-8-92
(Date)

Indicate whether map is based on General Land Office records, actual survey of tract, or deed to vendor from former owner; or indicate the nature of other information used.

[Title of District Court and Cause.]

**JUDGMENT ON THE DECLARATION OF
TAKING AND ORDER OF POSSESSION**

This matter coming on upon motion of the petitioner United States of America, by and through its attorneys of record, for a judgment on the declaration of taking and order of possession, and a hearing having been held in open Court on said motion, and the Court having considered said declaration and the petition for condemnation heretofore filed herein, Finds: First: That the United States of America is empowered by law to acquire property by condemnation under judicial process for the use and purposes set forth in said declaration of taking and said petition for condemnation; Second: That this proceeding was instituted and the petition for condemnation and declaration of taking herein were filed at the request of the Secretary of War of the United States, the authority empowered by law to acquire the lands described in said petition and declaration of taking, and at the direction of the Attorney General of the United States, the person authorized by law to direct the institution of such proceedings; Third: That said declaration of taking was filed on February 4, 1943, and simultaneously therewith, the sum of \$15,009.00 was deposited in the Registry of this Court in this cause as the estimated just compensation as set forth in said declaration of taking, and that said declaration of taking contained (1) a statement of authority under which and the public use for which

the lands described therein were taken; (2) a description of the lands taken sufficient for identification thereof; (3) a statement of the estate or interest taken in said lands for said public use; (4) a plan showing the lands taken; (5) a statement of the sum of money estimated by the Secretary of War of the United States to be just compensation for the taking of the [9] lands described therein; and (6) a statement by the said Secretary of War that in his opinion the ultimate award for the taking of said lands will probably be within any limits prescribed by law as the price to be paid therefor; Fourth: That possession of the lands described in said declaration of taking and petition for condemnation on file herein was granted to the United States of America as of August 18, 1942, by order of this Court made and entered on that date in the case of United States of America v. N. Albert Nelson, et al., Civil No. 1304. Now, Therefore, it is hereby Ordered, Adjudged and Decreed: (1) That the full fee simple title in and to the lands described in the petition for condemnation and in the declaration of taking on file herein, and which are described as follows:

Tract No. A-240: Beginning at the Southeast corner of the Julia Ann Jones Donation Land Claim No. 52; running thence west 79.66 chains; thence South 36.75 chains; thence East 95.46 chains; thence North $22^{\circ} 57'$ West 39.93 chains to the place of beginning, containing 320 acres of land; more or less, all in Polk County, Oregon, said land above described being the North one-half of the Donation

Land Claim of Jonathan Liggett and wife, and more particularly described as Claims No. 39 and No. 53, Notification No. 2697, Township 9 South, Ranges 5 and 6 West of the Willamette Meridian in Polk County, Oregon, became and was vested in the petitioner United States of America as of February 4, 1943, the date of the filing of said declaration of taking herein and the depositing into the Registry of this Court of the amount of estimated just compensation, free and discharged of all claims and liens of every kind whatsoever, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines; (2) That on said date, to-wit: February 4, 1943, the right to receive just compensation for the taking of the interest hereinabove set out in the lands hereinabove described, vested in the person entitled thereto, and that the amount of just compensation to be paid for the taking of said lands shall be ascertained and awarded in this proceeding as established by judgment herein, pursuant to law; and (3) That possession under said declaration of taking of the lands hereinbefore described be delivered forthwith to and taken by the petitioner United States of America.

/s/ **JAMES ALGER FEE**
District Judge.

Dated at Portland, Oregon, this 4th day of February, 1943.

[Endorsed]: Filed Feb. 4, 1943. [10]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT POLK COUNTY
TO PETITION FOR CONDEMNATION

Now comes the defendant Polk County, a municipal corporation and political subdivision of the State of Oregon, and for its answer to the petition herein Alleges that no taxes are due said defendant upon the real property described in said petition.

BRUCE SPAULDING

District Attorney

By R. S. KREASON

Deputy

State of Oregon,
County of Polk—ss.

I, Bruce Spaulding, being first duly sworn, on oath say that I am the duly elected, qualified and acting District Attorney of Polk County, Oregon, and that the facts set forth in the foregoing answer are true as I verily believe.

BRUCE SPAULDING

By R. S. KREASON

Deputy

Subscribed and sworn to before me this 13th day of February, 1943.

[Seal]

EDNA M. PITZER

County Clerk

[Endorsed]: Filed Feb. 18, 1943. [11]

[Title of District Court and Cause.]

ANSWER

Comes now Oregon Mutual Life Insurance Company and by way of answer to the petition herein respectfully shows:

I.

Oregon Mutual Life Insurance Company is a corporation duly organized and existing under and by virtue of the terms of the laws of the State of Oregon, with its principal office and place of business in the City of Portland, County of Multnomah, State of Oregon.

II.

Kaufman Mortgage Company is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon with its principal office and place of business in the City of Portland, Multnomah County, Oregon.

III.

Certified Securities, Inc. is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon.

IV.

On the 11th day of April, 1942, defendant Certified Securities, Inc. made, executed and delivered to Kaufman Mortgage Company its promissory note in writing, bearing date the 11th day of April, 1942, in words and figures substantially as follows:

For Value Received, I promise to pay to the order of Kaufman Mortgage Company, a corporation organized under the laws of the State of Oregon, at its office at the Porter Building, Portland, Oregon, or at such other place as the holder hereof may from time to time designate in writing, the principal sum of Four Thousand Five Hundred and No/100 Dollars, with interest at the rate of (5%) Five percent per annum from April 11, 1942, payable in lawful money of the United States as follows:

10 successive annual installments due and payable on December 1, each year commencing on the first day of December, 1942, the first 9 of said installments being in the sum of Three Hundred Sixty-Eight and 10/100 Dollars (\$368.10) each, and the last installment being in the full amount of the then remaining balance of principal and interest; and each installment to be applied first to the payment of interest and then principal.

Privilege is reserved to make additional payments to apply on principal of \$100.00 or multiples thereof on interest pay dates after one year.

This note evidences a loan and is secured by a Real Estate Mortgage of even date. In the event of default in the payment of any installment of principal or interest, the holder of this note may, at its option, and without notice, declare all the unpaid principal and accrued interest of said note immediately due and payable. Failure to exercise this option shall not constitute a waiver of the

right to exercise the same in the event of any subsequent default.

In the case of default, if this note is placed in the hands of an attorney for collection, I agree to pay a reasonable sum as attorneys' fees.

CERTIFIED SECURITIES,
INCORPORATED,

An Oregon Corporation

By EDWARD K. PIASECKI (Sg'd)
Pres.

By ROSE A. MORGALI (Sg'd)
Sec.

Edward K. Piasecki (Sg'd)."

Endorsed on back as follows:

"Without Recourse Pay to the Order of
Oregon Mutual Life Insurance Company
Kaufman Mortgage Company
By K. C. Kaufman (Sg'd)

The proceeds of the loan evidenced by this note having been disbursed on 5-25-42.

Interest is rebated from 4-11-42 to 5-25-42 for \$27.50."

V.

Said defendant Certified Securities, Inc. was on the 11th day of April, 1942, the owner and in possession of certain real property in Polk County, Oregon, more particularly described as

Beginning at the southeast corner of the Julia Ann Jones DLC No. 52, running thence West 79.66 chains, thence South 36.75 chains, thence East 95.46

chains, thence North 22° 57' West 39.93 chains to the place of beginning, containing 320 acres, of land, more or less, all in Polk County, Oregon, and more particularly described as Claims No. 39 and No. 53 Not. No. 2697 Township 9 South, Ranges 5 and 6, West of Willamette Meridian, Polk County, Oregon, such land being the north half of the DLC of Jonathan Liggett and wife. [13]

On said date to secure the payment of the principal and interest of said note, according to the tenor thereof, it did at the same time and place execute in its corporate name and under its corporate seal and deliver to Kaufman Mortgage Company a certain mortgage bearing date the 11th day of April, 1942, and conditioned for the payment of the sum of Four Thousand Five Hundred Dollars (\$4,500.00) lawful money of the United States of America, and interest thereon at the rate and at the time and in the manner provided in said mortgage and said promissory note, and according to the terms and conditions thereof, which said mortgage was duly acknowledged and certified so as to entitle the same to be recorded, and the same was thereafter, to-wit, on the 20th day of May, 1942, duly recorded in the office of the County Recorder of Polk County, Oregon, in Book 72, page 625 et seq. Records of Mortgages for said Polk County, Oregon, a copy of which said mortgage with endorsements thereon is hereto attached marked Exhibit A and by reference thereto incorporated in and made a part of this answer.

VI.

Subsequent to the execution of said mortgage, the said Kaufman Mortgage Company by an instrument in writing duly acknowledged and certified so as to entitle it to be recorded, assigned said mortgage and the debt secured thereby to defendant Oregon Mutual Life Insurance Company, which said assignment of mortgage was duly recorded in Book 73, page 57, Records of Mortgages for Polk County, Oregon, on the 10th day of July, 1942, a copy of which said assignment of mortgage with the endorsement thereon is hereto attached marked Exhibit B and by reference thereto incorporated in and made a part of this answer.

VII.

Oregon Mutual Life Insurance Company is now the holder and owner of said mortgage and the lien and rights under said mortgage and assignment securing the indebtedness. **No part of the principal of said promissory note or the interest thereon has ever been paid, save and except the sum of Two Hundred Fifty-one and 85/100 Dollars (\$251.85) on principal and interest [14] on the entire indebtedness to December 1, 1942, and there is now due and owing to this defendant, Oregon Mutual Life Insurance Company, the balance on principal in the sum of Four Thousand Two Hundred Forty-eight and 15/100 Dollars (\$4,248.15), together with interest thereon at the rate of five per cent (5%) per annum from and after December 1, 1942, which said sums are secured by a first mortgage lien upon**

the real property sought to be condemned by the United States Government in this proceeding.

VIII.

This answering defendant invokes the benefits of an applicable Act of Congress (U. S. Code Annotated, Title 40, Section 258a) providing

“Upon the filing of a declaration of taking the Court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner. The Court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as shall be just and equitable.”

Wherefore, this answering defendant prays that the decree, order or judgment to be entered herein shall provide expressly that prior to the passing of title to the United States of America for the property hereinabove described and mentioned, and described in plaintiff's petition, that there be awarded and paid to Oregon Mutual Life Insurance Company out of the funds now on deposit in this Court, or out of other funds provided for the payment of said property, the full sum of Four Thousand Two Hundred Forty-eight and 15/100 Dollars (\$4,248.15), together with interest thereon at the rate of five per cent (5%) per annum from and after December 1, 1942, and that this defendant may have such other and further relief as to the

Court may seem equitable and proper in the premises.

TEAL, WINFREE, McCULL-
LOCH, SHULER & KELLEY
A. B. WINFREE

Attorneys for Defendant Oregon Mutual Life
Insurance Company. [15]

State of Oregon

County of Multnomah—ss.

I, R. W. R. Calderwood, being first duly sworn
on my oath depose and say:

I am Secretary of Oregon Mutual Life Insurance
Company, the answering defendant herein; I have
read the within and foregoing Answer and know the
contents thereof, and the same is true as I verily
believe.

R. W. R. CALDERWOOD.

Subscribed and sworn to before me this 16th day
of February, 1943.

[Seal] A. B. WINFREE
Notary Public for Oregon.

My Commission expires: January 11, 1944.

[Endorsed]: Filed Feb. 18, 1943. [16]

This mortgage, made by Certified Securities, Incorporated, an Oregon Corporation, of Polk County, Oregon, herein called the mortgagor, and Kaufman Mortgage Company, a corporation, mortgagee.

Witnesseth: That the mortgagor in consideration of the sum of \$4,500.00—four thousand five hundred and no/100 dollars to them in hand paid by the mortgagee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the mortgagee the following described real estate situated in Polk County, Oregon, to-wit:

Beginning at the Southeast corner of the Julia Ann Jones Donation Land Claim No. 52; running thence West 79.66 chains; thence South 36.75 chains; thence East 95.46 chains; thence North 22° 57' West 39.93 chains to the place of beginning, containing 320 acres of land, more or less, all in Polk County, Oregon, and more particularly described as Claims #39 and #53, Not. No. 2697, Township 9 South, Ranges 5 and 6 West of the Willamette Meridian, Polk County, Oregon, said land above described being the North one-half of the Donation Land Claim of Jonathan Liggett and wife.

Together with all and singular the tenements, hereditaments, improvements, privileges and appurtenances thereto belonging or in any wise appertaining, including homestead exemption and all and singular the right, title and interest of the said mortgagor at law or in equity; together with all reservoir rights, drainage ditches and water rights of every nature however evidenced, with all rights of way, ditches, pumping sites, machinery, or other physical properties now used or for conveyance of water to or from or attaching or belonging to said land or by the mortgagor for use thereon, or which

may be hereafter acquired for and used on or with said land. To have and to hold the same, unto the said mortgagee forever.

This mortgage secures the payment of a loan of (\$4,500.00) Four Thousand Five Hundred and No/100 Dollars together with interest thereon as evidenced by a certain promissory note of even date herein signed by the mortgagors and payable to the mortgagee at his principal office in Portland, Multnomah County, Oregon, which loan accrues according to the terms of said note on December 1, 1951. This conveyance secures any and all renewals and extensions of the whole or part of said indebtedness however evidenced with interest and any change in the terms or rate of interest shall not impair in any manner the validity of or priority of this mortgage or release the mortgagor from personal liability for the debt hereby secured. That this mortgage shall be subrogated to the lien, although released of record, of any prior encumbrance on the said premises paid or discharged from the proceeds of the loan represented by the aforesaid promissory note. The right is hereby given by the mortgagor and [17] reserved by the mortgagee to make partial releases of the security herein described if agreeable to the mortgagee without notice to or the consent, approval or agreement of any other parties in interest, which partial releases shall not impair in any manner the validity or priority of this mortgage on the security remaining or without modifying the covenants, conditions, or

lien of this obligation or the original liability of the mortgagors either in whole or in part.

It is hereby agreed that wherever used in this instrument the word "Mortgagor" includes the undersigned and all persons who succeed to their interest in the aforementioned real property, and the word "Mortgagee" includes the mortgagee's administrators, executors, and assigns and all persons who succeed to his interest in this obligation.

The said mortgagor further covenants and agrees with the mortgagee as follows and will:

First.—Pay the sums of money hereby secured and has good right to sell and convey said land, and hereby warrants and will defend the same unto the said mortgagee forever, as a first and prior lien upon said premises.

Second.—Pay all taxes, assessments and charges of every kind levied or assessed against said real estate before delinquent; also all taxes assessed in Oregon against said mortgagee on this mortgage, note or debt secured hereby, before the same become delinquent, if the amount of such tax plus the interest exceeds the maximum amount permitted by law the excess to be paid by the mortgagee; to pay all dues, or assessments upon drainage ditch, water rights or water stock; to immediately deliver to mortgagee receipts showing such payments; in case of the mortgagor's failure the mortgagee may pay the same; pay all the expenses incurred by the mortgagee and a reasonable attorney's fee, if, because of default, the note secured hereby is given to an attorney for collection and payment be made

before suit is filed. To construct or maintain drainage ditches as may be necessary to prevent depreciation of land on account of becoming too wet, either from sub-irrigation or excess of surface water; to maintain the supply of water for irrigation and domestic purposes equal to that now used or which may hereafter be used upon, or attaching to or belonging to said land; and will assign, or pledge to mortgagee all evidences of ownership of reservoir, drainage, ditches and water rights, or physical properties connected therewith in form satisfactory to mortgagee. [18]

Third,—Keep said premises and all buildings, fences, or other improvements thereon in as good condition and repair as the same now are or may be put hereafter; not to permit the buildings on said premises, or said premises to become vacant or unoccupied; not to remove or demolish or to permit the removal or demolition in part or all of any buildings, improvements, fences, fixtures, or appurtenances now on, or that may hereafter exist on said premises; not to cut, sell, sever, or remove fixtures, appliances or conveniences now on or that may hereafter exist on said premises, or to do anything that may weaken or impair the security under this mortgage, or permit the cutting or removal of timber from said premises except for domestic use on said premises.

All fixtures, appliances, appurtenances, or conveniences, whether or not specifically mentioned or enumerated herein and in addition thereto all

shades, screens, pipes, wiring, facilities for pumping water and heating the same, linoleum, hay track and/or fixtures, parts or appliances connected with any of the above items, and/or property now or hereafter attached to the buildings, shall all be construed and regarded as part of the real property and covered by this mortgage.

To keep any orchard on said land properly irrigated, cultivated, sprayed and cared for.

Fourth.—Keep all buildings now on, or hereafter to be erected on said real estate insured at the option and to the satisfaction of the mortgagee in such company as may be designated by said mortgagee; to deliver all policies and the renewals thereof to the mortgagee prior to the date the same take effect. As long as any part of the loan remains unpaid the mortgagors authorize the mortgagee, if he elects, to effect or place the renewals of all insurance on the property described herein in such companies as the mortgagee may select and mortgagor will pay all premiums when due, and this mortgage shall stand as security for the premiums. The mortgagors hereby assign and transfer to the mortgagee all right and interest in all policies of insurance carried or to be carried upon said real estate.

Fifth.—That as additional and collateral security for the payment of said note, mortgagors hereby assign to mortgagee all of the rents, revenues, royalties, rights and benefits payable by occupant, and/or accruing under all tenancies and leases now on said real estate, or which may hereafter be placed

thereon and the tenants, or their assignees are hereby directed on production of a certified copy of this mortgage [19] to pay all rents, revenues, royalties, rights and benefits to mortgagee; this provision to become effective only upon default in the terms and conditions of this mortgage, or prior to such default, upon notice to the tenant, lessee, assignee, or sub-lessee in such lease, and to terminate and become null and void upon release of this mortgage.

Sixth.—Waiver of exercise of any option in one or more instances shall not be regarded as a waiver or relinquishment of the right to exercise such option thereafter.

Not to commit or permit waste on said premises.

Failure of the mortgagor or those having their interest herein to pay such taxes, fire insurance premiums, or to insure or to keep any other conditions herein contained, all as agreed shall constitute waste.

Seventh.—That the failure to pay when due, any sum secured hereby or any renewal or extension thereof, or the failure to comply with any of the covenants or agreements hereof, shall cause the entire debt secured hereby to become due and payable, at the option of the mortgagee, without notice; and in case suit shall be instituted to foreclose this mortgagee, or there is litigation affecting the real estate described herein, the mortgagor agrees to pay in addition to the costs and disbursements allowed by statute, reasonable attorney's fees; also,

that all sums paid by the mortgagee for abstract of title, insurance, taxes, assessments, charges, and attorney's fees, water or ditch dues, rent or assessments, may be collected from the mortgagor immediately or on demand at the option of the mortgagee, with interest from the date of payment at 8%, and shall form a part of the debt secured hereby.

Eighth.—In the event of suit being instituted to foreclose this mortgagee, or if it becomes necessary to carry out the terms and conditions of this mortgage according to its true intent, on motion of the mortgagee the Court may appoint a receiver without notice to preserve and protect the security; to prevent waste; to collect the rents and profits arising out of said premises, during the pendency of said foreclosure and to apply such moneys to the payment of the amount then secured by this mortgage, first deducting all proper charges and expenses and the receiver shall be forthwith entitled to possession of said premises including all crops growing thereon. The mortgagee or receiver shall be accountable only to the extent that moneys or income actually collected are applied as aforesaid, nor shall the exercise of this right and the application of said moneys delay or retard foreclosure. [20]

In witness whereof, the said mortgagor has hereunto set his hand and seal this 11th day of April, A. D. 1942.

[Seal] CERTIFIED SECURITIES,
INCORPORATED'

An Oregon Corporation.

[Seal] By EDWARD K. PIASECKI
President

[Seal) By ROSE A. MORGALI
Secretary

[Seal] By EDWARD K. PIASECKI

State of Oregon

County of Marion—ss

On this 18th day of May, 1942, before me appeared Edward K. Piasecki and Rose A. Morgali both to me personally known, who being duly sworn, did say that he, the said Edward K. Piasecki is the President, and she, the said Rose A. Morgali is the Secretary of Certified Securities Incorporated, a corporation within named, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said officers hereby acknowledged said instrument to be the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this, the day and year first in this, my certificate, written.

[Seal] JOHN F. STEELHAMMER
Notary Public for Oregon.

My Commission expires 3-28-45.

No. 22545

State of Oregon
County of Polk—ss.

I certify that the within was received and duly recorded by me in Polk County Records, Book of Mortgages No. 72, page 625 on the 20th day of May, 1942, at 4:30 P. M.

C. S. GRAVES

County Recorder
EDNA M. PITZER
Deputy [21]

EXHIBIT B

ASSIGNMENT OF MORTGAGE

Know All Men by These Presents: That the undersigned, Kaufman Mortgage Company, a corporation, Assignor, in consideration of the sum of (\$4,500.00), Four Thousand Five Hundred and No/100 Dollars to the undersigned paid by Oregon Mutual Life Insurance Company, a corporation organized under the laws of the State of Oregon, Assignee, receipt of which is hereby acknowledged has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over unto said Assignee, a certain Mortgage dated April 11, 1942, made and executed by Certified Securities, Inc., an Oregon corporation, as Mortgagors, to Assignor, as Mortgagee, to secure the payment of the sum of (\$4,500.00) Four Thousand Five Hundred and No/100 Dollars, together with the note or obliga-

tion herein described and the money due or to become due thereon, with interest, which said Mortgage was recorded on May 20, 1942, in the office of the County Recorder of Polk County, Oregon, in Book 72, Page 625, of Mortgage Records of said County and State.

To have and to hold the same unto said Assignee, its successors and assigns, for its use and benefit, subject only to the provisions in said Mortgage mentioned.

Said Assignor does hereby covenant to and with said Assignee that the said Assignor is the lawful owner and holder of said Note and Mortgage, and that it has good right to sell, transfer, and assigns the same as aforesaid, and that there is now due and owing upon said Note and Mortgage the sum of (\$4,500.00) Four Thousand Five Hundred and No/100 Dollars, with interest thereon at the rate of (5%) five per-cent per annum, from May 25, 1942.

[Seal] KAUFMAN MORTGAGE
 COMPANY
 K. C. Kaufman (Signed)
 President

State of Oregon
County of Multnomah—ss.

On this 25th day of May, 1942, before me appeared K. C. Kaufman to me personally known, who, being duly sworn, did say that he is the President of Kaufman Mortgage Company and that the Seal affixed to said instrument is the Corporate

Seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and he acknowledged said instrument to be [22] the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this the day and year first in this, my certificate, written.

[Seal] IRMA SEABERG (Signed)

Notary Public for Oregon.

My Commission expires 4-16-46.

(Endorsement on back)

No. 23149—Assignment of Mortgage from Kaufman Mortgage Company to Oregon Mutual Life Insurance Company.

State of Oregon

County of Polk—ss.

I certify that the within was received and duly recorded by me in Polk County Records, Book of Mortgages, at No. 73 Page 57 on the 10th day of July, 1942.

C. S. GRAVES (Signed)

County Recorder

C. S. GRAVES (Signed)

County Recorder.

Filed at 8:25 o'clock A. M.

Service of the within Summons & Answer and receipt of a copy is hereby admitted this 17th day of February, 1943.

EDWARD K. PIASECKI

President of & Attorney for
Certified Sec., Inc.

JOHN E. WALKER

Atty. for Petitioner.

[Endorsed]: Filed Feb. 18, 1943. [23]

[Title of District Court and Cause.]

**PETITION FOR ORDER FIXING VALUE
AND DISBURSING FUNDS ON DEPOSIT**

Come now the defendant Certified Securities, Inc., an Oregon corporation, by and through its President, Edward K. Piasecki, and its Secretary, Rose A. Morgali, and the defendant Ernest Schuld, for the purpose of petitioning the Court for an order fixing value herein and for the distribution of funds on deposit, and by this, their petition, submit themselves to the jurisdiction of this Court and to the entry of judgment herein, and for such other orders or decrees as may be proper in the matter, and expressly waive the right to the intervention of a jury for the purpose of determining the reasonable and just compensation to be paid for the taking of the hereinafter described land, expressly waive notice of hearing on this petition, and represent to the Court as follows:

I.

That on the 4th day of February, 1943, in the above-entitled cause the United States of America acquired the full fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, in and to the following described lands in Polk County, Oregon, to-wit:

Tract No. A-240: Beginning at the Southeast corner of the Julia Ann Jones Donation Land Claim No. 52; running thence West 79.66 chains; thence South 36.75 chains; thence East 95.46 chains; thence North $22^{\circ} 57'$ West 39.93 chains to the place of beginning, containing 320 acres of land, more or less, all in Polk County, Oregon, said land above described being the North one-half of the Donation Land Claim of Jonathan Liggett and wife, and more particularly described as Claims No. 39 and No. 53, Notification No. 2697, Township 9 South, Ranges 5 and 6 West of the Willamette Meridian in Polk County, Oregon,

by filing in said action on said date its declaration of taking and by depositing simultaneously therewith in the Registry of this Court in this cause the sum of \$15,009.00 as the estimated just compensation to be paid for the taking of the [24] lands hereinbefore described and by thereafter filing in this Court its petition for condemnation of said lands;

II.

That immediately prior to the time that title to said land vested in the United States of America

through filing of the declaration of taking aforesaid, the fee simple title to the land hereinbefore described was vested in the Certified Securities, Inc., a corporation organized and existing under the laws of the State of Oregon, subject to a mortgage given on April 11, 1942, to the Kaufman Mortgage Company, and afterwards assigned by the Kaufman Mortgage Company to the Oregon Mutual Life Insurance Company, said mortgage being given to secure a note for \$4,500.00 and being of record in Volume 72, at page 625 of the Mortgage Records of Polk County, Oregon, and subject to a farm lease in favor of Ernest Schuld;

III.

That these defendants have made no transfer or conveyance of their interest in and to said lands or their right and interest in and to the compensation for the taking of said lands on deposit in this cause; that except as hereinbefore mentioned, there are no liens, encumbrances, taxes, assessments or charges of any kind whatsoever against said lands, and that no person other than as herein mentioned has any right or claim in and to the compensation for the taking of said lands; that as of December 1, 1942, there was due and owing to the Oregon Mutual Life Insurance Company by virtue of the mortgage aforesaid the sum of \$4,248.15, with interest to be added thereon at the rate of 5% per annum from and after December 1, 1942;

IV.

That the defendant Ernest Schuld disclaims any right, title or interest in and to the lands taken in this proceeding and waives any claim to any part of the compensation to be paid for said taking;

V.

That the reasonable and just compensation to be paid by the petitioner United States of America for the taking of said lands was and is the sum of \$15,009.00, and it is hereby agreed that said sum of \$15,009.00 was and is the [25] fair market value of the hereinbefore described lands at the time of taking, and that said sum may be fixed by this Court as the reasonable and just compensation to be paid by the petitioner United States of America, and that said sum may be fixed as the full, final and complete award for the taking of said lands.

Wherefore, petitioning defendants pray for an order and judgment of this Court in this cause fixing the fair market value of the land taken in this cause in the sum of \$15,009.00 and authorizing and directing the Clerk of this Court to pay said sum of \$15,009.00 in the following manner: (1) to the Oregon Mutual Life Insurance Company, a corporation, an amount sufficient to discharge in full the mortgage debt due said corporation; (2) to the defendant Certified Securities, Inc., the balance of the sum remaining on deposit herein after payment of the aforementioned mortgage debt, said

payments to be made without charging commission or poundage fees on any part of said sum.

[Seal] CERTIFIED SECURITIES,
INC.,

By /s/ EDWARD K. PIASECKI
President

/s/ ROSE A. MORGALI
Secretary.

/s/ ERNEST SCHULD

State of Oregon

County of Polk—ss.

I, Ernest Schuld, being first duly sworn, on oath depose and say:

That I am one of the defendants in the above-entitled cause; that I have read the foregoing Petition for Order Fixing Value and Disbursing Funds on Deposit, know the contents thereof, and that the same is true as I verily believe.

/s/ ERNEST SCHULD

Subscribed and sworn to before me this 27 day of February, 1943.

[Seal] /s/ J. F. WIENERT
Notary Public for Oregon.

My Commission expires: Apr. 22, 1945. [26]

State of Oregon

County of Marion—ss.

Come now Edward K. Piasecki and Rose A. Morgali, who being first duly sworn, depose and say:

That I, Edward K. Piasecki, am the President

and I, Rose A. Morgali, am the Secretary of Certified Securities, Inc., an Oregon corporation; that I, Edward K. Piasecki, as President, and I, Rose A. Morgali, as Secretary of said corporation, executed the foregoing Petition for Order Fixing Value and Disbursing Funds on Deposit for and on behalf of said corporation; that I, Edward K. Piasecki, President, and I, Rose A. Morgali, Secretary of Certified Securities, Inc., an Oregon corporation, further say that I have read the foregoing petition and know the contents thereof, and that all matters set forth therein are true as I verily believe.

/s/ **EDWARD K. PIASECKI,**
President.

/s/ **ROSE A. MORGALI,**
Secretary.

Subscribed and sworn to before me this 23 day of February, 1943.

[Seal] /s/ **E. L. CRAWFORD,**
Notary Public for Oregon.
My commission expires: May 10/43.

[Endorsed]: Filed March 8, 1943. [27]

[Title of District Court and Cause.]

**ORDER FIXING VALUE AND DISBURSING
FUNDS AND FINAL JUDGMENT IN
CONDEMNATION**

This matter coming on upon the oral motion of the United States of America, petitioner herein, by and through its attorneys of record, for an

order fixing value and disbursing funds and final judgment in condemnation; and the defendants Certified Securities, Inc., an Oregon corporation, and Ernest Schuld having appeared herein by and through a petition for order fixing value and disbursing funds on deposit wherein the defendant Ernest Schuld disclaims any right, title or interest in and to the lands taken herein or the funds on deposit herein, and the defendant Certified Securities, Inc., alleges itself to have been the owner of the lands condemned herein at the time of taking, submits itself to the jurisdiction of this Court, petitions the Court for an order fixing the fair market value of the lands taken in this proceeding in the sum of \$15,009.00, and authorizes this Court to disburse the sum necessary to discharge the mortgage of the defendant Oregon Mutual Life Insurance Company; and the defendant Oregon Mutual Life Insurance Company, an Oregon corporation, having appeared herein by and through an answer filed in this cause; and the defendant Polk County, a municipal corporation and political subdivision of the State of Oregon, having appeared herein by and through its answer wherein it is alleged that there are no taxes due said county on the lands taken herein; and the Court having heard testimony as to what constitutes reasonable and just compensation to be paid for the taking of the lands described in the petition for condemnation and declaration of taking on file herein and hereinafter described, and having considered the evidence presented as to the rights of the various defendants

to the reasonable and [28] just compensation therefor, and being fully advised as to the law and facts herein, Finds: First: That pursuant to the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. Sec. 257), the Act of February 26, 1931 (46 Stat. 1421, 40 U.S.C. Sec. 258a) and Acts supplementary thereto and amendatory thereof, the Act of August 18, 1890 (26 Stat. 316) as amended by the Acts of July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518, 50 U.S.C. Sec. 171), and March 27, 1942 (Public Law 507—77th Congress), the Secretary of War was and is authorized to acquire real estate by condemnation under judicial process in the name of the United States of America; Second: That pursuant to said authority the Secretary of War has selected the hereinafter described lands for acquisition by the United States of America for use in connection with the expansion of a military training camp known as Camp Adair, Oregon, and for related military purposes, and for such other uses as may be authorized by Congress or by Executive Order, and has determined and is of the opinion that the hereinafter described lands are necessary adequately to provide for the expansion of a military training camp and for related military purposes, and that said lands are required for immediate use, and that it is necessary and advantageous to the interest of the United States to acquire the hereinafter described lands by condemnation under judicial process, and that by direction of the Attorney General of the United States, pursuant to the request of the Secretary of War,

this condemnation proceeding was instituted pursuant to the aforementioned statutes for the purpose of acquiring the estate or interest hereinafter set forth in and to the lands so selected; Third: That funds for the acquisition of said lands were appropriated by the Act of Congress approved April 28, 1942 (Public Law 528—77th Congress), and that there is on deposit in the Registry of this Court in this cause the sum of \$15,009.00 as estimated just compensation for the taking of the hereinafter described lands under declaration of taking filed in this cause on February 4, 1943; Fourth: That pursuant to the filing of the declaration of taking aforesaid and the deposit of \$15,009.00 as estimated just compensation in the Registry of this Court, the full fee simple title in and to the lands hereinafter described, subject to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, vested in the United States of America, free and discharged of all claimfis of any [29] kind whatsoever; Fifth: That at the time of the filing of the declaration of taking aforesaid in the above-entitled Court the fee simple title to said lands hereinafter described was vested in the defendant Certified Securities, Inc., a corporation organized and existing under the laws of the State of Oregon, subject only to the lien of a mortgage in favor of the defendant Oregon Mutual Life Insurance Company; that the County of Polk, Oregon, has no right, title or interest in and to the lands herein condemned or the funds on deposit in this cause; and that the defendant

Ernest Schuld has no right, title or interest in and to the lands herein condemned or the funds on deposit in this cause; Sixth: That there is now due and owing to the defendant Oregon Mutual Life Insurance Company the sum of \$4,305.38, including principal and interest; Seventh: That at the time of the filing of the declaration of taking aforesaid in this Court, the fair market value of the lands hereinafter described was \$15,009.00, and that said sum is the reasonable and just compensation to be paid for the taking by the United States of America of said lands, subject to existing easements as hereinafter mentioned; Now, Therefore, it is hereby Ordered, Adjudged and Decreed that the full fee simple title to the following described lands in Polk County, Oregon, to-wit:

Tract No. A-240: Beginning at the Southeast corner of the Julia Ann Jones Donation Land Claim No. 52; running thence West 79.66 chains; thence South 36.75 chains; thence East 95.46 chains; thence North $22^{\circ} 57'$ West 39.93 chains to the place of beginning, containing 320 acres of land, more or less, all in Polk County, Oregon, said land above described being the North one-half of the Donation Land Claim of Jonathan Liggett and wife, and more particularly described as Claims No. 39 and No. 53, Notification No. 2697, Township 9 South, Ranges 5 and 6 West of the Willamette Meridian in Polk County, Oregon, and containing 320 acres of land, more or less,

vested in the petitioner United States of America on February 4, 1943, free and discharged of all

liens and claims of any kind whatsoever, subject, however, to easements for public roads and highways, for public utilities, for railroads, for pipe lines; and It Is Further Ordered, Adjudged and Decreed that the sum of \$15,009.00 was as of the date of the filing in this Court of the declaration of taking on February 4, 1943, the fair market value of the lands hereinbefore described, and that said sum, without interest on any part thereof, is the reasonable and just compensation to be paid by the United States of America for the taking of the full fee simple title to said lands, subject to existing easements as hereinbefore mentioned; And It is Further Ordered that the Clerk of this Court [30] be and he is hereby authorized and directed to pay forthwith from the sum of \$15,009.00 on deposit herein (1) to the defendant Oregon Mutual Life Insurance Company, 1029 S. W. Alder Street, Portland, Oregon, the sum of \$4,305.38, in full settlement of all claims of said defendant against said lands or the funds on deposit herein; and (2) to the defendant Certified Securities, Inc., 9 Ladd and Bush Building, Salem, Oregon, the sum of \$10,703.62 in full settlement of all claims of said defendant against said lands or the funds on deposit herein; and it is further directed that said Clerk make said payments without charging commission or poundage fees thereon, and that said Clerk take the receipts of said defendants for said payments.

/s/ CLAUDE McCOLLOCH,
District Judge.

Dated at Portland, Oregon, this 8th day of March, 1943.

[Endorsed]: Filed March 8, 1943. [31]

Certified Securities, Inc.,
9 Ladd and Bush Building,
Salem, Oregon.

United States District Court
District of Oregon

\$10,703.62 Portland 7, Oregon, March 10, 1943

Received from G. H. Marsh, clerk of the District Court of the United States for the District of Oregon, the sum of Ten Thousands Seven Hundred Three and 62/100 Dollars, on account of full settlement in Cause No. Civil 1789, United States vs. Certified Securities Inc., et al.

[Seal] CERTIFIED SECURITIES,
 INC.
By E. K. PIASECKI
Pres.

[Endorsed]: Filed March 13, 1943. [32]

Oregon Mutual Life Insurance Company,
1029 S. W. Alder Street,
Portland, Oregon

United States District Court
District of Oregon

\$4,305.38 Portland 7, Oregon, March 10, 1943

Received from G. H. Marsh, clerk of the District Court of the United States for the District of Oregon, the sum of Four Thousand Three Hundred Five and 38/100 Dollars, on account of full settlement in Cause No. Civil 1789, United States vs. Certified Securities, Inc., et al.

OREGON MUTUAL LIFE INS-
SURANCE COMPANY
By D. P. STALNAKER
Vice President.

[Endorsed]: Filed March 13, 1943. [33]

[Title of District Court and Cause.]

MOTION FOR ORDER VACATING ORDER
FIXING VALUE AND DISBURSING
FUNDS AND FINAL JUDGMENT IN CON-
DEMNATION

Comes now plaintiff, United States of America, by and through its attorneys of record, and moves the above entitled Court for an Order vacating the Order fixing value and disbursing funds and final judgment in condemnation heretofore entered by this Court in this cause on the 8th day of March,

1943, upon the ground and for the reason that plaintiff believes it expedient to introduce further testimony in this cause relating to the fair market value of the property, including the merchantable timber thereon, taken in this proceeding.

/s/ HARRY D. BOIVIN

Special Attorney

Department of Justice

[Endorsed]: Filed Sept. 3, 1943. [34]

[Title of District Court and Cause.]

**ORDER VACATING ORDER FIXING VALUE
AND DISBURSING FUNDS AND FINAL
JUDGMENT IN CONDEMNATION**

This matter coming on for hearing upon Motion of the plaintiff, United States of America, by and through its attorneys of record, for an Order vacating the Order fixing value and disbursing funds and final judgment in condemnation, and It Appearing to the Court that plaintiff believes it expedient to introduce further testimony in this cause relating to the fair market value of the property, including merchantable timber thereon, taken in this proceeding; Now, Therefore, it is hereby Ordered that the Order fixing value and disbursing funds and final judgment in condemnation heretofore entered by this Court in this cause on the 8th day of March, 1943, be and the same is hereby set aside and vacated; and It Is Further Ordered that a

copy of this Order be served by mail on all of the above named defendants in this cause.

Dated at Portland, Oregon, this 3rd day of September, 1943.

/s/ CLAUDE McCOLLOCH
District Judge

[Endorsed]: Filed Sept. 3, 1943. [35]

[Title of District Court and Cause.]

ANSWER

Defendant, Certified Securities, Inc., an Oregon corporation, for its answer to plaintiff's complaint alleges:

I.

That at all the dates and times hereinafter mentioned, Certified Securities, Inc., was, and now is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon.

II.

That defendant, Certified Securities, Inc., an Oregon corporation, is the owner in fee simple of the following described real property, to-wit:

Tract No. A-2400: Beginning at the southeast corner of the Julia Ann Jones Donation Land Claim No. 52; running thence West 79.66 chains; thence South 36.75 chains; thence East 95.46 chains; thence North 22° 57' West 39.93 chains to the place of beginning, containing 320 acres of land; more or

less, all in Polk County, Oregon, said land above described being the North one-half of the Donation Land Claim of Jonathan Liggett and wife, and more particularly described as Claims No. 39 and No. 53, Notification No. 2697, Township 9 South, Ranges 5 and 6 West of the Willamette Meridian in Polk County, Oregon.

III.

That the reasonable market value of said property at the time of the appropriation thereof by the plaintiff was and is the sum of \$25,000.00. [36]

IV.

That on or about the 1st day of September, 1942, plaintiff herein appropriated said real property described above for public use, to-wit: to the establishment of Camp Adair.

V.

That on account thereof these defendants have been, and are damaged in the sum of \$25,000.00. That on the 15th day of March, 1943, the plaintiff made payment to apply thereon in the sum of \$15,009.00, leaving an unpaid balance as of that date of \$9,991.00, with interest thereon at the rate of six per cent per annum from Aug. 17, 1942.

Wherefore: This answering defendant demands judgment in the sum of \$9,991.00, together with interest thereon at the rate of six per cent per annum from August 17, 1942 until paid; together with its costs and disbursements incurred herein; and that said judgment be entered and made a part

of the order and judgment of appropriation of the real property herein described.

W. C. WINSLOW

EDWARD K. PIASECKI

Attorney for Defendant

Certified Securities, Inc. [37]

State of Oregon,

County of Marion—ss.

I, Edward K. Piasecki being first duly sworn, say that I am the President of the defendant, Certified Securities, Inc., in the within entitled cause; and that the foregoing Answer therein is true as I verily believe.

EDWARD K. PIASECKI

Subscribed and sworn to before me this 8th day of November, A. D. 1943.

[Seal] ROSE A. MORGALI

Notary Public for Oregon.

My commission expires May 14, 1945.

State of Oregon,

County of Marion—ss.

I, Edward K. Piasecki do hereby certify that I am one of the attorneys for defendant, Certified Securities, Inc., herein, that I served the within Answer upon John E. Walker, attorney for plaintiff, in Marion County, Oregon, on the 8th day of November, 1943, by placing a copy thereof, duly certified to be such by me as one of the attorneys for defendant, Certified Sec. in a sealed envelope, plainly addressed to John E. Walker, Esq., at Port-

land, Oregon, postage prepaid and deposited the same in the U. S. post office at Salem, Oregon, this 8th day of November, 1943.

EDWARD K. PIASECKI

One of the Attorneys for the Certified Securities,
Inc. [38]

State of Oregon,
County of Linn—ss.

I, do hereby admit due and legal service of the within answer in Linn County, Oregon, on this day of Nov., 1943, by receiving a true copy thereof duly certified to be such by Edward K. Piasecki, one of the attorneys for Def. Cert. Sec. Inc. I further certify that I am a resident and inhabitant of said County, and that I am one of the attorneys of record for the

One of the Attorneys for the Pltff.

[Endorsed]: Filed at Albany, Ore., Nov. 10, 1943.

[39]

[Title of District Court and Cause.]

REPLY

Comes now the petitioner United States of America and for a reply to the Answer of the defendant Certified Securities, Inc., to the Petition for Condemnation, admits, denies and alleges as follows:

I.

Replying to the allegations contained in paragraphs I and II of said Answer, the petitioner admits said allegations;

II.

Replying to the allegations contained in paragraph III of said Answer the petitioner denies that as of the date of the taking in this proceeding the reasonable and fair market value of the lands taken herein and described in the Petition for Condemnation was the sum of \$25,000.00 or any greater or lesser specific sum. The petitioner admits that said lands had some value as of the time of the taking herein but alleges that the amount of said value is unknown to the petitioner and is a matter to be determined by trial of this cause;

III.

Replying to the allegations contained in paragraph IV of said Answer the petitioner alleges that possession of the lands taken was granted to the petitioner by an Order of the above Court as of August 18, 1942.

IV.

Replying to the allegations contained in paragraph V of said Answer the petitioner denies that the answering defendants were damaged by the taking in this proceeding in the sum of \$25,000.00 or in any lesser or greater specific sum. The petitioner admits that the lands taken had some [40] value at the time of the taking and that the de-

fendants were damaged by the taking to the extent of that value but the petitioner alleges that the amount of said value and damage is unknown to the petitioner and is a matter to be determined by the trial of this cause.

Further replying to the allegations contained in said paragraph V the petitioner admits that disbursement of the sum of \$15,009.00 heretofore has been made in this proceeding but alleges that if the award of just compensation herein is less than said amount then the excess of said disbursement over the award of just compensation will be due and owing to the petitioner, United States of America with interest thereon.

/s/ STANLEY R. DARLING

Of Attorneys for Petitioner

State of Oregon,

County of Multnomah--ss.

I, Stanley R. Darling, being first duly sworn, de-
pose and say:

That I am one of the attorneys for the petitioner in the above entitled cause and that I have made service of the foregoing Reply by delivering in person a duly certified copy thereof to W. C. Winslow, attorney of record for the defendant Certified Securities, Inc., on the 22nd day of May, 1944.

/s/ STANLEY R. DARLING

Subscribed and sworn to before me this 22nd day of May, 1944.

[Seal] /s/ L. JEANETTE BEAR
Notary Public for Oregon. My commission expires
9/23/47.

[Endorsed]: Filed May 22, 1944. [41]

[Title of District Court and Cause.]

VERDICT OF THE JURY

We, the Jury duly sworn and impaneled to try the above cause do hereby find that the full market value of the land acquired by the United States of America in this proceeding as of the date the United States took possession of said land, to-wit: August 18, 1942, was the sum of Fifteen Thousand Seven Hundred Dollars (\$15,700.00).

Dated at Portland, Oregon, this 26th day of May, 1944.

NORMAN J. HANKS
Foreman

[Endorsed]: Filed May 26, 1944. [42]

[Title of District Court and Cause.]

May 26, 1944

Now at this day comes the parties hereto by their counsel as of yesterday. Whereupon the jurors

impaneled herein being present, the trial of this cause is resumed. Thereafter, the said jury having heard the evidence adduced, the arguments of counsel and the instructions of the Court, retires in charge of a proper sworn officer to consider of its verdict. Thereafter, plaintiff being present by Mr. Stanley R. Darling, Special Attorney, Department of Justice, and the defendant Certified Securities, Inc., by Mr. W. C. Winslow, of counsel, said jury comes into court and returns its verdict in words and figures as follows, to-wit:

“We, the Jury duly sworn and impaneled to try the above cause do hereby find that the full market value of the land acquired by the United States of America in this proceeding as of the date the United States took possession of said land, to-wit: August 18, 1942, was the sum of Fifteen Thousand Seven Hundred Dollars (\$15,700.00).

Dated at Portland, Oregon, this 26th day of May, 1944.

NORMAN J. HANKS
Foreman”

which verdict is received by the Court and ordered to be filed and by direction of the Court judgment is entered thereon, and the same is recorded in the Civil Order Book. [43]

In the District Court of the United States
For the District of Oregon

Civil No. 1789

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CERTIFIED SECURITIES, INC., an Oregon corporation; ERNEST SCHULD; OREGON MUTUAL LIFE INSURANCE COMPANY, an Oregon corporation; POLK COUNTY, a municipal corporation and political subdivision of the State of Oregon,

Defendants.

JUDGMENT ON VERDICT

This cause coming on regularly for trial, plaintiff appearing by and through Stanley R. Darling, Special Attorney for the Department of Justice, and the defendant Certified Securities, Inc., appearing by and through W. C. Winslow and Edward K. Piasecki, its attorneys, a jury was impaneled and sworn to try the issues in said cause, and upon the order of the Court, the jury viewed the real property sought to be acquired by the United States by and through this proceeding, and after hearing the testimony of witnesses for the plaintiff and for the defendants, argument of counsel, and the instructions of the Court, did retire for deliberation and after deliberating, did on the 26th day of May, 1944, return into this Court a verdict in words and figures as follows, to-wit:

In the District Court of the United States
For the District of Oregon

Civil No. 1789

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CERTIFIED SECURITIES, INC., an Oregon corporation; ERNEST SCHULD; OREGON MUTUAL LIFE INSURANCE COMPANY, an Oregon corporation; POLK COUNTY, a municipal corporation and political subdivision of the State of Oregon,

Defendants.

VERDICT OF THE JURY [44]

We, the Jury duly sworn and impaneled to try the above cause do hereby find that the full market value of the land acquired by the United States of America in this proceeding as of the date the United States took possession of said land, to-wit: August 18, 1942, was the sum of Fifteen Thousand Seven Hundred Dollars (\$15,700.00).

Dated at Portland, Oregon, this 26th day of May, 1944.

/s/ NORMAN J. HANKS
Foreman

And It Appearing to the Court that heretofore on the 4th day of February 1943, there was filed in this cause a Declaration of Taking, and simul-

taneously therewith the United States of America paid into the Registry of this Court the sum of \$15,009.00 for the use and benefit of the persons entitled thereto; Now, Therefore, by virtue of the law and by reason of the premises and the verdict, it is hereby Ordered and Adjudged that the full fair market value of the hereinafter described real property sought to be acquired by the United States of America by and through this proceeding be and the same is hereby fixed in the sum of \$15,700.00 as of the 18th day of August, 1942, and It Is Further Ordered and Adjudged that upon the payment into the Registry of this Court of the further sum of \$691.00 together with interest at the rate of six per cent per annum on the total award of \$15,700.00 from the 18th day of August, 1942 to the 4th day of February 1943, the date of the filing of the Declaration of Taking, and interest at the rate of six per cent per annum on the deficiency award of \$691.00 from the 4th day of February, 1943 to the date of the deposit of said deficiency award into the Registry of this Court, judgment and decree of this Court shall be entered herein appropriating and condemning for the use and purposes of the United States of America, as set forth in said Declaration of Taking and Petition for Condemnation on file herein, the full fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, in and to the following described lands in Polk County, Oregon: [45]

Tract No. A-240: Beginning at the Southeast corner of the Julia Ann Jones Donation Land Claim No. 52; running thence West 79.66 chains; thence South 36.75 chains; thence East 95.46 chains; thence North 22° 57' West 39.93 chains to the place of beginning, containing 320 acres of land; more or less, all in Polk County, Oregon, said land above described being the North one-half of the Donation Land Claim of Jonathan Liggett and wife, and more particularly described as Claims No. 39 and No. 53, Notification No. 2697, Township 9 South, Ranges 5 and 6 West of the Willamette Meridian in Polk County, Oregon.

JAMES ALGER FEE
District Judge

Dated at Portland, Oregon, this 26th day of May, 1944.

[Endorsed]: Filed June 7, 1944. [46]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Judgment on Verdict entered May 26, 1944, and filed June 7, 1944.

Dated at Portland, Oregon, August 23rd, 1944.

/s/ ERNEST FALK

Special Attorney

Department of Justice

/s/ BERT C. BOYLAN

Special Attorney

Department of Justice

/s/ LINUS M. FULLER

Special Attorney

Department of Justice

[Endorsed]: Filed Aug. 23, 1944. [47]

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS TO BE URGED ON APPEAL

The appellant, the United States of America, will rely upon the following points in the prosecution of its appeal from the Judgment of the United States District Court for the District of Oregon:

1. The District Court was without jurisdiction to enter the Order of September 3, 1943 vacating the Order of March 8, 1943, Fixing Value, Disbursing Funds and Final Judgment in Condemnation.

2. The District Court was without jurisdiction to enter the Judgment of May 26, 1944, Fixing Value in the sum of \$15,700.00.

3. The Order of the District Court of March 8, 1943, Fixing Value, Disbursing Funds and Final Judgment in Condemnation should be reinstated.

Dated at Portland, Oregon, this 15th day of March, 1945.

/s/ CARL C. DONAUGH

United States Attorney

/s/ BERT C. BOYLAN

Special Assistant to the

United States Attorney

United States of America

District of Oregon

County of Multnomah—ss.

I, Bert C. Boylan, Special Assistant to the United States Attorney for the District of Oregon, hereby certify that on the 15th day of March, 1945, I made service of the within Appellant's Statement of Points To Be Urged on Appeal on the appellee herein, Certified Securities, Inc., by depositing in the United States Postoffice at Portland, Oregon, a duly certified copy thereof enclosed in an envelope with postage fully prepaid thereon addressed to W. C. Winslow, 403 Masonic Temple Building, Salem, Oregon, of attorneys for the Certified Securities, Inc.

/s/ BERT C. BOYLAN

[Endorsed]: Filed 3/15/45. [48]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD

To: The Clerk of the District Court of the United States for the District of Oregon:

Comes now the United States of America, the appellant herein, pursuant to Rule 75, Federal Rules of Civil Procedure, and designates the following portions of the record to be contained in the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause:

1. Petition for Condemnation filed February 4, 1943.
2. Declaration of Taking filed February 4, 1943.
3. Judgment on the Declaration of Taking entered February 4, 1943.
4. Answer of Polk County, Oregon filed February 18, 1943.
5. Answer of Oregon Mutual Life Insurance Company, a corporation, filed February 18, 1943.
6. Petition of Certified Securities, Inc. and Ernest Schuld for an Order Fixing Value and Disbursing Funds on Deposit filed March 8, 1943.
7. Order Fixing Value, Disbursing Funds on Deposit and Final Judgment in Condemnation entered March 8, 1943.
8. Receipt of Certified Securities, Inc. for \$10,703.62 filed March 13, 1943.
9. Receipt of Oregon Mutual Life Insurance Company, a corporation, for \$4,305.38 filed March 13, 1943.

10. Motion for an Order Vacating Order Fixing Value, Disbursing Funds and Final Judgment in Condemnation filed September 3, 1943. [49]

11. Order Vacating Order Fixing Value, Disbursing Funds and Final Judgment in Condemnation entered September 3, 1943.

12. Answer of Certified Securities, Inc. filed November 10, 1943.

13. Reply filed May 22, 1944.

14. Verdict of the Jury filed May 26, 1944.

15. Judgment on the Verdict entered May 26, 1944.

16. Judgment on the Verdict filed June 7, 1944.

17. Notice of Appeal by Plaintiff dated and filed August 23, 1944.

18. Statement of Points Upon Which Appellant Intends to Rely on the Appeal filed March 15, 1945.

19. Designation of Contents of Record on Appeal filed March 15, 1945.

Dated at Portland, Oregon, this 15th day of March, 1945.

/s/ CARL C. DONAUGH

United States Attorney for
the District of Oregon

/s/ BERT C. BOYLAN

Special Assistant to the
United States Attorney

United States of America
District of Oregon
County of Multnomah—ss.

I, Bert C. Boylan, Special Assistant to the

United States Attorney for the District of Oregon, hereby certify that on the 15th day of March, 1945, I made service of the within Designation of Contents of Record on appeal on the appellee herein, Certified Securities, Inc., by depositing in the United States Postoffice at Portland, Oregon, a duly certified copy thereof enclosed in an envelope with postage fully prepaid thereon addressed to W. C. Winslow, 403 Masonic Temple Building, Salem, Oregon, of attorneys for the Certified Securities, Inc.

/s/ BERT C. BOYLAN

[Endorsed]: Filed March 15, 1945. [50]

United States of America
District of Oregon—ss.

CERTIFICATE OF CLERK

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 52 inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civil 1789, in which United States of America is Petitioner and Appellant, and Certified Securities, Inc., an Oregon corporation; Ernest Schuld; Oregon Mutual Life Insurance Company, an Oregon corporation; Polk County, a municipal corporation and political subdivision of the State of Oregon are Defendants and

Appellees; that said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the appellant and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designation, as the same appears of record and on file at my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 19th day of March, 1945.

[Seal]

LOWELL MUNDORFF

Clerk

By F. L. BUCK

Chief Deputy [52]

[Endorsed]: No. 11012, United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Certified Securities, Inc, an Oregon Corporation, Appellee.

Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed March 21, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11012

UNITED STATES OF AMERICA,

Appellant

v.

CERTIFIED SECURITIES, INC., an Oregon corporation; ERNEST SCHULD; OREGON MUTUAL LIFE INSURANCE COMPANY, an Oregon corporation; POLK COUNTY, a municipal corporation and political subdivision of the State of Oregon,

Appellees.

APPELLANT'S STATEMENT OF POINTS TO
BE URGED ON APPEAL

The appellant, the United States of America, will rely upon the following points in the prosecution of its appeal from the Judgment of the United States District Court for the District of Oregon:

1. The District Court was without jurisdiction to enter the Order of September 3, 1943 vacating the Order of March 8, 1943, Fixing Value, Disbursing Funds and Final Judgment in Condemnation.
2. The District Court was without jurisdiction to enter the Judgment of May 26, 1944, Fixing Value in the sum of \$15,700.00.
3. The Order of the District Court of March 8, 1943, Fixing Value, Disbursing Funds and Final Judgment in Condemnation should be reinstated.

Dated at Portland, Oregon, this 11th day of May, 1945.

CARL C. DONAUGH

United States Attorney

BERT C. BOYLAN

Special Assistant to the

United States Attorney

United States of America

District of Oregon

County of Multnomah—ss.

I, Bert C. Boylan, Special Assistant to the United States Attorney for the District of Oregon, hereby certify that on the 11th day of May, 1945, I made service of the within Appellant's Statement of Points To Be Urged on Appeal on the appellee herein, Certified Securities, Inc., by depositing in the United States Postoffice at Portland, Oregon, a duly certified copy thereof enclosed in an envelope with postage fully prepaid thereon addressed to W. C. Winslow, 403 Masonic Temple Building, Salem, Oregon, of attorneys for the Certified Securities, Inc.

BERT C. BOYLAN

[Endorsed]: Filed May 14, 1945. Paul P. O'Brien, Clerk.